

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEANA COLEMAN,

Plaintiff,

v.

AMERICAN COMMERCE INSURANCE
COMPANY, a foreign insurance company,

Defendant.

Case No. 09-5721RJB

ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS/PROHIBIT JOINDER
OF NATHAN PECK AND
MOTION FOR SANCTIONS

This matter comes before the Court on the above captioned motions (Dkt. 85 & 87). The Court has considered the motions, responses thereto, and the remainder of the file herein.

The underlying facts of the case are known by the parties and the Court, and will not be repeated herein. On July 2, 2010, Plaintiff filed a document entitled "Service of Notice of Right to Join Suite [sic]/Copy of Summons and Complaint." Dkt. 81. The document gave notice that Nathan Peck was served with a copy of the summons and complaint. Dkt. 81. On July 9, 2010, the Defendant filed a motion seeking either to dismiss Nathan Peck or to prohibit his joinder. Dkt. 85. Defendant states that the deadline for joining parties has passed, and that the Plaintiff has not properly sought to amend her complaint to add the party. Defendant also filed a motion for sanctions based on the service of notice of right to join suit (notice sent to Nathan Peck). Dkt. 87. Defendant states that the filing is frivolous and untimely joinder. Dkt. 87.

Plaintiff responds by stating that the notice was required under RCW 4.24.010. The statute states:

1 If one parent brings an action under this section and the other parent is not named
2 as a plaintiff, notice of the institution of the suit, together with a copy of the
3 complaint, shall be served upon the other parent: PROVIDED, That notice shall
be required only if parentage has been duly established. Such notice shall be in
compliance with the statutory requirements for a summons.

4 Plaintiff states that counsel simply served Mr. Peck with a Notice out of an abundance of
5 caution, and the legal messenger filed a declaration of service with the Court. Dkt. 99, p. 3.
6 Plaintiff also states that the declaration was not a motion by the Plaintiff to join Mr. Peck as a
7 party.

8 Defendant's arguments are without merit. Nathan Peck is not a party to this litigation
9 and the Plaintiff has not filed a motion to add Mr. Peck to this action. A motion is a request of
10 the court by a party. *See* Fed.R.Civ.P. 7(b). The notice was not a request, it was merely a
11 document stating that Nathan Peck was served. The Court cannot grant Defendant's motion to
12 dismiss Mr. Peck, because he is not a party, nor can the Court prohibit Mr. Peck from joining,
13 because the Plaintiff has not moved to join him. The Defendant's motions are essentially moot.
14 There is no relief to be granted. Finally, Defendant's motions for sanctions are without merit
15 and without foundation since Defendant's underlying motion is without merit. The Defendant's
16 motions should be denied without prejudice. The Defendant may raise the issue again if it is
17 appropriate.

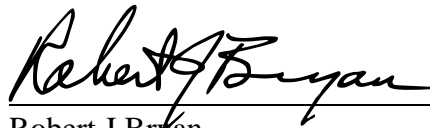
18 The Court does hereby find and **ORDER**:

19 (1) Defendant's Motion to Dismiss/Prohibit Joinder of Nathan Peck (Dkt. 85) is
20 **DENIED** without prejudice;

21 (2) Defendant's Motion for Terms and Sanctions (Dkt. 87) is **DENIED** without
22 prejudice; and

23 (3) The Clerk is directed to send copies of this Order all counsel of record and any party
24 appearing *pro se* at said party's last known address.

25 DATED this 10th day of August, 2010.

26 
27 Robert J Bryan
28 United States District Judge